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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/562,273

12/22/2005

James R. Burfiend

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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EXAMINER

STEPHENS III, JOSE S

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

07/14/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/562,273	Applicant(s) BURFIEND ET AL.	
	Examiner JOSE S. STEPHENS III	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6,9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6,9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/2/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8 April 2010 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the personal hygiene device (power toothbrush) which includes a pump must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 6, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (US Patent 6,220,702) in view of Sullivan (US Patent 4,903,718).

Regarding claims 6, 9, and 11, and the intended use of the claimed invention "for a fluid, for use with a personal hygiene device", it has been held that a recitation with

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respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. If the prior art structure is capable of performing the intended use, then it meets the claim. *Ex parte Masham*, 2 USPQ2d 1647.

With respect to claim 6, figure 6 of Nakamura discloses a flexible container (container in figure 6) capable of being used for a fluid, for use with a personal hygiene device, comprising a flexible bag (bag in figure 6) having a front panel portion 1 and a rear panel portion 2 and sealed along a bottom edge (1c and 2c) thereof, defining an interior volume for fluid, and further having a gusset (3 and 4) along each longitudinal edge thereof which connect the front and rear panel portions thereof and allows allow the front and rear panel portions to expand away from each other when the bag is filled, and wherein the bag includes two sealed wing portions (6 and 7) on either side of a central portion at a top end (1d and 2d) thereof, wherein the central portion includes a spout element 5 which is constructed to permit exit of fluid from the container after it has been filled.

Nakamura discloses the claimed invention except for the wing portions extending above the central portion of the bag, terminating approximately in the plane of a top edge of the spout element, and wherein the wing portions include an inner edge which extends to the central portion separately from the spout element, wherein the wing portions each include an open section which extends above the gusset in fluid communication with the interior volume of the container, the open sections extending inwardly from opposing side edges of the container a small distance compared to the

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width of the container, the remainder of the wing portions, to the central portion, being sealed, wherein the open sections each have a width approximately equal to the sealed remainder of the wing portions, the open sections allowing the gusset to expand fully, permitting the bag to fill completely.

Figure 3 of Sullivan discloses a flexible container 10 comprising a valve 6 positioned in a depression or recess 11 formed in the upper edge of the container, wherein the valve terminates approximately in the plane of a top edge of the container.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the flexible container of Nakamura by extending the wing portions above the central portion of the flexible container, as shown by the of the container of Sullivan in figure 3. The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. When old elements are simply arranged with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious. *KSR* at 1395-66 (citing *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)).

Claim 9 claims the personal hygiene device is a power toothbrush and a personal hygiene device was not positively claimed in claim 6. Therefore the personal hygiene device is treated as intended use and is given little patentable weight. The power toothbrush is also given little patentable weight because of the little patentable weight given to the personal hygiene device.

With respect to claim 11, figure 3 of Sullivan further discloses a container 10 comprising a spout element 6 that has a valve (column 3, lines 35-37). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Nakamura in view of Sullivan by incorporating a valve in order to permit exit of fluid therefrom, as taught by Sullivan (column 3, lines 35-37).

6. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. (US Patent 6,220,702) in view of Sullivan (US Patent 4,903,718), and further in view of Gruber (US Patent 6,918,153).

With respect to claims 12 and 13, figure 6 of Nakamura discloses a flexible container (container in figure 6) capable of being used for a fluid, for use with a personal hygiene device, comprising a flexible bag (bag in figure 6) having a front panel portion 1 and a rear panel portion 2 and sealed along a bottom edge (1c and 2c) thereof, defining an interior volume for fluid, and further having a gusset (3 and 4) along each longitudinal edge thereof which connect the front and rear panel portions thereof and allows allow the front and rear panel portions to expand away from each other when the bag is filled, and wherein the bag includes two sealed wing portions (6 and 7) on either side of a central portion at a top end (1d and 2d) thereof, wherein the central portion includes a spout element 5 which is constructed to permit exit of fluid from the container after it has been filled.

Nakamura discloses the claimed invention except for a personal hygiene device which includes a pump; and the wing portions of the container extend above the central portion of the bag, terminating approximately in the plane of a top edge of the spout

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element, and wherein the wing portions include an inner edge which extends to the central portion separately from the spout element, wherein the wing portions each include an open section which extends above the gusset in fluid communication with the interior volume of the container, the open sections extending inwardly from opposing side edges of the container a small distance compared to the width of the container, the remainder of the wing portions, to the central portion, being sealed, the open sections allowing the gusset to expand fully, permitting the bag to fill completely, wherein the flexible bag fits onto and is removable from the pump in the personal hygiene device..

Figure 3 of Sullivan discloses a flexible container 10 comprising a valve 6 positioned in a depression or recess 11 formed in the upper edge of the container, wherein the valve terminates approximately in the plane of a top edge of the container.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the flexible container of Nakamura by extending the wing portions above the central portion of the flexible container, as shown by the of the container of Sullivan in figure 3. The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. When old elements are simply arranged with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious. *KSR* at 1395-66 (citing *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976))

The combination of Nakamura in view of Sullivan discloses the claimed invention except for the combination of a personal hygiene device and a fluid container, wherein

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the personal hygiene device includes a pump, and the flexible bag fits onto and is removable from the pump in the personal hygiene device.

Figure 2 of Gruber discloses the combination of a power toothbrush 2 and fluid containers (8 and 18), wherein the power toothbrush includes a pump 13, and the flexible bag fits onto and is removable from the pump in the personal hygiene device (column 3, lines 25-28). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the combination of Nakamura in view of Sullivan by incorporating a power toothbrush, that toothbrush including a pump that connects to the flexible container in order to apply an additive to the teeth during operation, without the user having to apply an additive manually to the brush head of the toothbrush first, as taught by Gruber (column 3, lines 34-37).

Response to Arguments

7. Applicant's arguments filed 8 April 2010 have been fully considered but they are not persuasive.

Claim 6 was amended and the limitations of the newly amended claim were not considered in combination in the previous office action. Consequently, the search has been updated, new prior art was applied, and applicant's arguments have been considered but are therefore moot.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSE S. STEPHENS III whose telephone number is 571-270-3797. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571-272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSS

/Ehud Gartenberg/
Supervisory Patent Examiner, Art Unit 3728